



U.S. Citizenship  
and Immigration  
Services

B5

DATE: OFFICE: TEXAS SERVICE CENTER

OCT 18 2012

FILE:

IN RE: Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

A withdrawal may not be retracted. 8 C.F.R. § 103.2(b)(6). If you believe the AAO inappropriately applied the law in reaching its finding of willful misrepresentation of a material fact, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO). On September 5, 2012, in accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO issued a notice advising the petitioner of derogatory information indicating that he submitted altered documentation, including books by others that he falsely claimed as his own work. In response, the petitioner asked to withdraw the petition. The AAO will acknowledge the petitioner's withdrawal of the appeal, and dismiss the appeal. The AAO will also enter a separate administrative finding of willful misrepresentation of a material fact.

The petitioner filed a Form I-140 petition on January 19, 2011, seeking classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner claimed that he sought employment in "economics, management, [and] teaching," and asserted that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner claimed that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. The petitioner willfully misrepresented facts in furtherance of that claim, and therefore the misrepresented facts are material to the petition.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking

the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

The evidence that the petitioner has submitted to support his waiver claim includes several altered or fabricated documents. His initial submission included what purported to be a printout from the web site of the Royal Economic Society (RES). The printout reads, in part:

► **Members of the Society**

Members are elected through a peer review process that culminates in a vote by existing Members. Each year 44 Members, 8 Foreign Members and up to 1 Honorary Fellow are elected from a group of over 700 candidates who are proposed by the existing Fellowship. Once elected, Members may use the postnominal FRS after their name, Foreign Members may use the postnominal ForMemRS after their name and Honorary Members may use the postnominal FRS after their name.

Women make up about 5 percent of the Members. Over the last 10 years about 10 percent of new Members elected to the Royal Economic Society have been women.

The printout, like the reproduction above, used two different fonts in the text. The AAO consulted the current web site of the RES, <http://www.res.org.uk>, as well as archived versions of the site from <http://web.archive.org> from September 22, 2010 and May 19, 2011 (dates shortly before and after the petition's January 19, 2011 filing date). The archived versions of the site include the following passage:

► **Members of the Society** visiting for the first time, please follow the instructions to register. Non-members are welcome to browse most areas of this site. We encourage you to take the opportunity to join the RES to get the full benefit of this site.<sup>1</sup>

The phrase "join the RES" on the web site is a link leading to the "Membership" page, which in turn invites readers to "apply for membership online . . . using a credit card."<sup>2</sup> The current membership page lists no membership requirements except the payment of an annual subscription fee.<sup>3</sup> The RES web site, therefore, does not indicate that the RES is a highly exclusive organization that admits only a handful of new members each year.

The AAO also found that the submitted language regarding the annual election of 44 members derived from the website not of the RES, but of the Royal Society, an entirely separate organization with a similar name (and which is not limited to economics). The "Fellowship" page of the Royal Society's web site indicates that the Royal Society's Fellowship "is made up of the most eminent scientists, engineers and technologists from the UK and the Commonwealth." That same page reads, in part:

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<sup>1</sup> <http://web.archive.org/web/20100922120646/http://www.res.org.uk/> and <http://web.archive.org/web/20110519225439/http://www.res.org.uk/> (printouts added to record July 2, 2012).

<sup>2</sup> <http://web.archive.org/web/20100623072347/http://www.res.org.uk/society/membership.asp> (printout added to record July 2, 2012)

<sup>3</sup> [http://www.res.org.uk/view/\\$\\_\\_contextUrl/view/subscription01.html](http://www.res.org.uk/view/$__contextUrl/view/subscription01.html) (printout added to record July 2, 2012).

Fellows are elected through a peer review process that culminates in a vote by existing Fellows. Each year 44 Fellows, 8 Foreign Members and up to 1 Honorary Fellow are elected from a group of over 700 candidates who are proposed by the existing Fellowship. . . .

Once elected, Fellows may use the postnominal FRS after their name, Foreign Members may use the postnominal ForMemRS after their name and Honorary Members may use the postnominal FRS after their name.

Women make up about 5 percent of the Fellowship. . . . Over the last 10 years about 10 percent of new Fellows elected to the Royal Society have been women.<sup>4</sup>

The petitioner inserted the above language from the Royal Society's web site into language from the RES's web site, substituting the word "Member" for the word "Fellow," to create an altered printout purportedly from the RES web site. The alteration created the false impression that RES membership is an exclusive and prestigious honor bestowed by vote, rather than a simple matter of paying a subscription fee. The alteration is material because the petitioner's admission into a highly exclusive society would demonstrate a degree of prestige and recognition in his field, potentially affecting his eligibility for the national interest waiver. Therefore, the alteration of the printout from the RES's web page constitutes willful misrepresentation of a material fact.

The AAO wrote to the petitioner on July 16, 2012, advising him of the AAO's intent to dismiss the appeal with a finding of willful misrepresentation of a material fact regarding his RES membership. In response, counsel stated:

We feel that there is a strong basis to refute the [AAO's] position. Since we were only retained late in the day of July 31st, we hereby respectfully request that you provide us with an additional period of time to submit our client's response. Additionally, it will take some time to procure the necessary documentation from third parties such as the Royal Society and/or the Royal Economic Society.

Additional time to respond to a request for evidence or notice of intent to deny may not be granted. 8 C.F.R. § 103.2(b)(8)(iv). The record contains no substantive response to the AAO's July 16, 2012 notice, and neither the petitioner nor counsel offered any facially plausible explanation for the demonstrable alteration of the printout submitted with the petition.

Further scrutiny of the record revealed numerous other instances of demonstrable, willful alteration and/or falsification of material evidence. The petitioner claimed authorship of two books, but this claim has not stood up to inquiry. The petitioner referred to his first claimed book, *Corporate Governance & Financial Efficiency* [sic] of *European Modern Banks*, as his "main achievement." The

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<sup>4</sup> <http://royalsociety.org/about-us/fellowship/> (printout added to record July 2, 2012).

petitioner plagiarized large sections of the book from *Financial Development and Technical Efficiency: Georgian Banking in Transition, 1991-2000*, a master's thesis presented in 2001 by Oregon State University student David Amaghlobeli.<sup>5</sup>

The petitioner's second claimed book, *The American Financial Fiasco: Can the American Economy Survive?*, is also the result of plagiarism. It is a repackaged version of *Wall Street and the Financial Collapse: Anatomy of a Financial Collapse*, a report issued on April 13, 2011 by the United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs. The text shows traces of the alteration, which included removal of most (but not all) references to the subcommittee. Page 9 of the book reads, in part:

In November 2008, we initiated investigation into some of the key causes of the financial crisis. Since then, the has [sic] engaged in a wide-ranging inquiry, issuing subpoenas, conducting over 150 interviews and depositions, and consulting with dozens of government, academic, and private sector experts. The We [sic] have accumulated and reviewed tens of millions of pages of documents, including court pleadings, filings with the Securities and Exchange Commission, trustee reports, prospectuses for public and private offerings, corporate board and committee minutes, mortgage transactions and analyses.<sup>6</sup>

The petitioner also claimed to be the author of an article, "Socialism vs. Social Democracy as Income-Equalizing Institutions," which appeared in the *Eastern Economic Journal* in 2008. The actual [redacted]<sup>7</sup> In an altered printout in the record, the petitioner substitute his name for [redacted] but left intact [redacted] credentials including a research position at Yale University, an institution with which the petitioner otherwise claimed no affiliation.

The petitioner submitted an altered printout of the online table of contents said to be from the Winter 2008 issue of *The International Economy*. The table listed the petitioner as the author of "Corporate Governance and Financial Efficiency of European Modern Banks." The cover of the issue shows Iranian [redacted] with the caption "Is Today 1935?" The cover art and list of articles actually correspond to the Winter 2006, not 2008, issue of *The International Economy*. The petitioner altered the list of articles by changing the date and by replacing a reference to "The Cox Revolution" by Christopher Whalen with a fabricated title and his own name.<sup>8</sup>

The petitioner submitted what purports to be a photocopy of an article called "Data Envelopment Analysis (DEA)," identified as [redacted] review of the petitioner's first book in *The*

<sup>5</sup> The thesis is available at <http://ir.library.oregonstate.edu/xmlui/bitstream/handle/1957/29327/AmaghlobeliDavid2002.pdf> (excerpts added to record August 29, 2012).

<sup>6</sup> The original report is available at [http://hsgac.senate.gov/public/\\_files/Financial\\_Crisis/FinancialCrisisReport.pdf](http://hsgac.senate.gov/public/_files/Financial_Crisis/FinancialCrisisReport.pdf) (excerpts added to record August 29, 2012).

<sup>7</sup> The abstract is available at <http://www.palgrave-journals.com/ej/journal/v34/n1/abs/9050011a.html> (printout added to record August 29, 2012).

<sup>8</sup> The article list and cover art are available online at <http://www.international-economy.com/Winter2006archive.htm> (printout added to record August 29, 2012).

*International Economy*. This document is actually a heavily altered version of “Georgia on My Mind,” [REDACTED] review of [REDACTED] *Necroeconomics*, which appeared in the Winter 2006 edition of *The International Economy*. The year “2006” is missing from the issue date in the copy, but the original page numbers and fragments of the original text remain.<sup>9</sup>

The petitioner also submitted an altered abstract from *American Economic Review*, Vol. 99, No. 5, December 2009. The petitioner’s printout identifies the citing article as “Corporate Governance and Financial Efficiency [*sic*] of European Modern Banks” by [REDACTED] and [REDACTED]. Below the title is an “Article Citation,” an instruction on how to cite the article in a bibliography. The title listed in the “Article Citation” does not match the title that appears above it. It reads: “[REDACTED] and [REDACTED] 2009. Data Envelopment Analysis (DEA);..Otar, Koraia., DEA – Method in practice *American Economic Review*, 99(5): 2012-21 [*sic*].” The title and the petitioner’s name are in a visibly different typeface from the remaining text of the “Article Citation.” The same visibly different typeface also appears in the abstract, which begins: “DEA is remarkable a non-parametric linear programming technique....”

[REDACTED] and [REDACTED] are the true authors of the article, but its actual title is “On the Possibility of Credit Rationing in the Stiglitz-Weiss Model.”<sup>10</sup> Unlike the petitioner’s submission, the “Article Citation” is consistent with the article’s title, with a consistent typeface throughout. The abstract does not mention DEA or the petitioner’s work.

On September 5, 2012, the AAO issued a second notice to the petitioner. The notice read, in part:

[T]he AAO has positively identified four altered documents and three plagiarized writings, all of them falsified to inflate your claimed reputation as an economist. The AAO cannot approve your petition in the face of such pervasive and systematic misrepresentation. By listing seven specific documents in this notice, the AAO does not mean to stipulate or imply that the AAO considers the remaining materials (such as witness letters or your claimed “Honor” Medal from the Georgian government) to be authentic. It is not clear what legitimate credentials, if any, you hold as an economist.

All of the altered, falsified, and/or plagiarized documents in the record are material to your claim of eligibility for the national interest waiver, because you claim that the materials establish the nature and extent of your contributions to the field of economics. Therefore, your submission of those materials constitutes willful misrepresentation of a material fact. As the AAO advised in its previous letter, any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into

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<sup>9</sup> The original article is available at [http://www.international-economy.com/TIE\\_W06\\_Aslund.pdf](http://www.international-economy.com/TIE_W06_Aslund.pdf) (printout added to record August 29, 2012).

<sup>10</sup> The original abstract is available at <http://www.acaweb.org/articles.php?doi=10.1257/aer.99.5.2012> (printout added to record August 29, 2012).

the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C)(i) of the Act, 18 U.S.C. § 1182(a)(6)(C)(i).

Absent independent and objective evidence to overcome, fully and persuasively, the above finding, the AAO will dismiss the appeal and enter a formal finding of material misrepresentation into the record. USCIS can consider this finding of material misrepresentation in future proceedings in which your admissibility is an issue. You have the right to withdraw your appeal, but a withdrawal will not negate or prevent a finding that you have already (by submitting the above materials in support of your petition) sought to procure immigration benefits through willful misrepresentation of material facts.

In a letter dated September 12, 2012, the petitioner notified the AAO of his “wish to withdraw [the] appeal.” The petitioner did not address or dispute any of the AAO’s assertions regarding his submission of altered documentation in support of his petition.

The AAO will acknowledge the withdrawal of the appeal, but, as the AAO advised in its earlier notices, the withdrawal of the appeal does not prevent a finding of willful misrepresentation of a material fact. That finding is administratively separate from the disposition of the appeal, and will affect any future filing on the petitioner’s behalf. The USCIS regulation at 8 C.F.R. § 103.2(b)(15) provides: “Withdrawal [of a prior benefit request] . . . shall not itself affect the new proceeding; *but the facts and circumstances surrounding the prior benefit request shall otherwise be material to the new benefit request.*” (Emphasis added.)

Section 204(b) of the Act states, in pertinent part, that:

After an investigation of the facts in each case . . . the [Secretary of Homeland Security] shall, if he determines that the facts stated in the petition are true and that the alien . . . in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition . . . .

Under the above section of the Act, USCIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. In this case, the record shows that the petitioner submitted false documents, a finding that the petitioner has failed to overcome despite being advised of the derogatory information in two AAO notices.

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

First, the petitioner submitted plagiarized and/or falsified books, articles, and related materials to USCIS. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Here, the petitioner's submission of the preceding falsified documents in support of the Form I-140 petition constitutes a false representation to a government official.

Second, the AAO finds that the petitioner willfully made the misrepresentation. The petitioner signed the Form I-140 petition, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of the Form I-140, at part 8, requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." Furthermore, with regard to the plagiarized books, the petitioner cannot have been under the sincere but mistaken impression that he wrote the material in the books falsely attributed to him. Placing his name on a Senate subcommittee report, thereby claiming authorship, can only have been a willful (rather than a mistaken or accidental) act on his part. On the basis of the petitioner's actions, including his affirmation made under penalty of perjury, the AAO finds that the petitioner willfully and knowingly made the misrepresentations.

Third, the evidence is material to the petitioner's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537.



As the falsified documents relate to the petitioner's past record in his field, as contemplated in *NYSDOT* at 22 I&N Dec. 219, they are material to this proceeding. Accordingly, the AAO concludes that the misrepresentations were material to the petitioner's eligibility.

By filing the instant petition and submitting altered and falsified documents in support of that petition, the petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.<sup>11</sup>

**ORDER:** The appeal is dismissed based on the petitioner's withdrawal of the appeal.

**FURTHER ORDER:** The AAO finds that the petitioner willfully misrepresented material facts by knowingly submitting falsified documents in an effort to mislead USCIS and the AAO on an element material to his eligibility for a benefit sought under the immigration laws of the United States.

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<sup>11</sup> It is important to note that while it may present the opportunity to enter an administrative finding of willful material misrepresentation, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. See *Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. See sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).